IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 11TH OCTOBER 2007 / 19TH ASWINA 1929

Crl.Rev.Pet.No. 3576 of 2007()

CRMP.1762/2007 of CHIEF JUDL.MAGISTRATE, ERNAKULAM

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REVN. PETITIONER:

N.K.ABDUL GAFOOR
S/O.ABUBAKER HAJI
NAGATHANKAVIL HOUSE
IRINGAL PO, VADAKARA
KOZHIKODE DISTRICT

BY ADV. SRI.K.RAMAKUMAR
SRI.M.H.HANIS

RESPONDENTS:

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1. STATE OF KERALA RPRESENTED BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM

2. MRS.MYMOON
W/O LATE ABDUL KHADIR
ALUNGAPPARAMBIL HOUSE
NEAR MYMOON THEATRE
CHITTOOR ROAD, ERNAKULAM

3. MR.NOUSHAD
S/O LATE ABDUL KHADIR
ALUNGAPPARAMBIL HOUSE
NEAR MYMOON THEATRE
CHITTOOR ROAD, ERNAKULAM

4. MR. SIYAD,
S/O LATE ABDUL KHADIR
ALUNGAPPARAMBIL HOUSE
NEAR MYMOON THEATRE
CHITTOOR ROAD, ERNAKULAM

5. MR.SHAHID
S/O LATE ABDUL KHADIR
ALUNGAPPARAMBIL HOUSE
NEAR MYMOON THEATRE
CHITTOOR ROAD, ERNAKULAM

6. MR.SUHUD
S/O LATE ABDUL KHADIR
ALUNGAPPARAMBIL HOUSE
NEAR MYMOON THEATRE
CHITTOOR ROAD, ERNAKULAM

BY PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 11/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 3576 OF 2007

Dated this the 11th day of October, 2007

O R D E R

The revision petitioner who is the complainant in Crl.M.P.No.1762/07 on the file of the CJM, Ernakulam, challenges the order dated 5.6.07 passed by the CJM dismissing the complaint under section 203 Cr.P.C.

2. The case of the revision petitioner/complainant is as follows:-

The five accused persons who are a mother and her four sons are the owners in possession of 1.05 acres of land comprised in Survey No.413/2 of Ernakulam village with a two storied residential building and a commercial building by name Kokker's Complex in which there are two theaters, namely, Mymoon and Lulu besides other shops. The complainant was informed that the accused are desirous of selling the said property. Accordingly, he approached the accused on 21.3.07 and negotiated the matter and the accused agreed that the properties would be sold for a total consideration of Rs.22 crores. The accused made the complaint believe that a regular agreement with

stipulations and conditions will be executed later. Believing the words of the accused and entertaining no suspicion about the representation made to the complainant, the complainant handed over a sum of Rs.10,000/- to the accused who accepted the same as token advance with specific stipulations that an agreement for sale of the said properties would be executed later. The accused had also handed over the photocopies of documents pertaining to the properties. The complainant got the documents examined through his advocate and approached the first accused who assured that on paying the sale price the sale deed will be executed. Accordingly, the complainant got ready the sale price on 12.4.07. When he tried to contact the 2nd respondent over the telephone he came to know that the 2nd accused had no intention to sell the property to him and that the promises made earlier were all false. The accused have misappropriated the said amount of Rs.10,000/-. They have thereby committed criminal breach of trust, cheating, etc. under sections 406 and 420 read with section 34 IPC. Hence the complaint.

3. The learned CJM recorded the sworn statement of the revision petitioner on 17.5.07. He was then asked to produce his

witnesses. After two adjournments for the same, he produced witnesses who were real estate brokers.

4. The learned Magistrate after conducting the enquiry under section 202 Cr.P.C., dismissed the complaint holding that except the self serving oral vibrations of the revision petitioner and his witnesses who were brokers, there was nothing to prove the alleged oral agreement for sale, that the dispute was essentially a civil dispute and that the ingredients of the alleged offences are not prima facie established and accordingly dismissed the complaint holding that there was no sufficient ground for proceeding further. It is the said order which is assailed in this revision.

5. The learned counsel for the revision petitioner submitted that eventhough a written agreement for sale was not executed when the complainant paid advance of Rs.10,000/- to the first accused, the recorded conversation through the mobile phones of the revision petitioner and second accused Noushad as incorporated at pages 3 and 4 of the Revision Memorandum will show that there was an agreement for sale as alleged and that the accused were resiling from their promise with a view to sell the

property to somebody else.

6. I have perused the alleged conversation through mobile phones as incorporated at pages 3 and 4 of the Revision Memorandum. There is nothing in the words attributed to the 2nd accused Noushad to discern the existence of the alleged oral agreement for sale in favour of the revision petitioner. It is the revision petitioner who tells Noushad that there was such an agreement. But the said agreement is not acknowledged or admitted by Noushad. Probably, the revision petitioner might have approached the accused for sale of the property. But the statement of Noushad goes to show that they have promised to sell the property to another party. The tone and tenor of Noushad only indicates that the revision petitioner had expressed a desire to purchase the property prior to the above conversation and when the revision petitioner enquired again with Noushad, the latter said sorry to the petitioner and revealed that they have already agreed to sell the property to another person. There is nothing in the replies of Noushad indicating any acknowledgment of the existence of any agreement for sale between him and the revision petitioner. In the absence of any material produced except the ipsi

dixit of the revision petitioner and his interested witnesses there were no material before the Magistrate so as to make out a prima facie case enabling him to proceed further in the matter. The complaint was presumably to sabotage the proposed sale of the properties to third parties. The complaint was rightly dismissed by the Magistrate and I do not see any good ground to interfere with the judicial discretion lawfully exercised by the Magistrate.

This revision is accordingly dismissed.

(V. RAMKUMAR, JUDGE)

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